**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**SIDE JURISDICTION**
**CRIMINAL APPLICATION NO.8259 OF 2005**

Ketan A. Mehta ...Applicant.
V/s.
The State of Maharashtra ...Respondent.

Shri M.H.Solkar i/b Amit Jambhotkar, advs. for the Applicant.
Mrs.M.M.Deshmukh, APP for the Respondent/State.

Shri Sudhakar Ramchandra Humbe, Police Sub-Inspector West Control Room, Bandra West, Mumbai-50 present.

**CORAM: J.H.BHATIA, J.**
**DATE : 16th March, 2007.**

**P.C.:**

1. Heard Mr.Solkar, the learned counsel for the applicant and Ms.Deshmukh, the learned APP for the State.

2. Respondent nos.2 and 3 are served but none is present.

3. To state in brief Manish Mehta, proprietor of M/s. H.Deepak & Co. claims to be the owner of certain diamonds. Respondent no.2 and 3, who are the accused had allegedly removed certain high quality diamonds of the company and replaced them by keeping low quality diamonds. On the report lodged by the company, the offence under Section 408 read with Section 34 of the

I.P.C. was registered against the accused nos.2 and 3. During the investigation, the high quality diamonds, which are alleged property of the complainant, were recovered from the accused persons. The applicant, who is constituted attorney of the complainant, had on behalf of the complainant made an application before the Metropolitan Magistrate 22nd Court at Andheri seeking direction to return the said diamonds to the complainant. The Investigating Officer had no objection, however, the learned Metropolitan Magistrate rejected prayer on the ground that if the property is given to the complainant the prosecution may fail to prove its case that the said property is a high quality diamonds. Against that order, the applicant has filed the present application.

4. According to the applicant, he will not dispose off the property pending the trial and produce before the Court in the same condition as it is . It is material to note that there is a jewellery valuation report issued by Sharad Mehta, who is Government approved valuer showing quality and valuation of the diamonds. It is also contended by the applicant that samples of such diamonds may be retained for the purpose of verification at the time of trial.

5. Ms.Deshmukh, the learned APP supports the order passed by the Metropolitan Magistrate but at the same time also makes a statement that the Investigating Officer, who is present before the Court has no objection to allow the application.

6. The offence was registered in 2005 and it is difficult to say how long it will take for trial and final disposal of the matter. The property is worth about Rs.20 lakhs and the applicant is willing to furnish the security for the same. No purpose will be served by keeping such high valuation property at the police station, particularly when the accused persons from whom the property is recovered have not appeared to take any objection for the same.

7. Therefore, application is allowed. Diamonds recovered from accused nos.2 and 3 be returned after keeping the appropriate inventory and samples of the same to the complainant, on his furnishing security to the tune of Rs.20 lakh with further direction that as and when property is required , the applicant shall produce the same before the Court and shall not dispose off the property without permission of the Court.

**(J.H.Bhatia,J.)**